legitimate brother is entitled, can justice be done to him. It is to be hoped that the lead of the enlightened legislature of Norway will soon be followed by our Assemblies.[18]

THE KENTUCKY STATE FIRE MARSHAL LAW.—The annual fire loss of the United States is greater than that of any country in the world, and constitutes a serious continuing drain on our national resources.[1] Since 1901 twenty-two states have passed what may be classed as "State Fire Marshal Laws" in an effort to reduce this loss to an attainable minimum.[2] These laws usually give the State Marshal the power to investigate fires of suspicious origin, and to remedy dangerous conditions. They have failed materially to reduce losses,[3] largely because attention has been concentrated on the extermination of incendiarism rather than on the elimination of fires due to carelessness and ignorance.[4]

In view of these facts, a law passed this year in Kentucky is noteworthy.[5] This statute makes it the duty of the State Marshal, in cooperation with municipal officials, regularly to inspect buildings all over the State, and to abate dangerous conditions.[6] It gives him the power to make and enforce such regulations as will cause all structures to be "constructed, made and kept safe from loss or damage

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[18]A movement in this direction is already perceptible. In 1915 three bills were introduced in the Illinois Assembly, providing respectively for giving to every *child* the father's surname; making children born in and out of wedlock equally heirs of father and mother and their kindred; and providing for inheritance by illegitimate child from putative father whenever such paternity shall have been established. See Legislative Digest of 49th General Assembly. State of Illinois, H. B. 454, 455, 602.

[1]During the past ten years our average annual fire loss has approximated $250,000,000. Weeks, Avoidance of Fires, 14. One-half of this loss "arises from ignorant, shiftless, dirty and vicious use of property", and could be prevented by intelligent foresight. Official Record of the First Amer. Nat. Fire Prevention Convention, 285; Report of Fire Waste Committee, Chamber of Commerce of the U. S. A. This is proved by the fact that our annual fire loss per capita is ten times that of Western Europe; in 1913 it was $2.25 as compared with 33 cents for England, 49 cents for France, and 28 cents for Germany. Report of Fire Waste Committee, *supra;* Weeks, *supra,* 16. It is irrefutably established that this loss is largely preventable by the fact that careful inspection methods have reduced fire loss in Philadelphia by 28%, in New York by 20%, in Cincinnati by 40% and in other cities to an even greater extent. Report of Philadelphia Fire Marshal, January 1, 1914.

[2]See *e. g.* Ill. Laws 1909, p. 266; La. Acts 1914, No. 26, p. 81; Mich. Acts 1911, No. 79; Pa. Public Laws 658-664 (adopted 1911) etc. etc.

[3]For the past ten years the average loss by fire has remained substantially the same. See Weeks, *supra,* 18.

[4]Notwithstanding its broad powers, "the office of fire marshal concerns itself almost exclusively with attending fires and investigating their causes, prosecuting cases of suspected arson", and inspecting public buildings. "Practically no attention is given to the correction of . . . occupancy conditions that are chiefly responsible for an annual fire loss of approximately $3,500,000 in Philadelphia." Preliminary and First Annual Reports of Fire Prevention Commission of Philadelphia, 1912.

[5]Ky. Acts 1916, c. 19, §§ 27-49, approved March 15, 1916.

[6]*Id.* § 37; on the value of inspection, see note 1, *supra.*

or loss of life or injury to persons by fire".[7] The standards adopted by the State Marshal are to be a minimum requirement all over the State in the construction of buildings and in their protection from fire.[8] Finally, all owners are required to keep their buildings safe,[9] and no owner "shall require, permit or suffer the public or any employe to go or be in any such place which is not safe."[10]

The authority to promulgate rules and establish standards given to the Fire Marshal by this statute is so broad that it may lay its validity open to attack on the ground that it endeavors to delegate legislative power to a ministerial officer. The rule is that while the legislature may not delegate the power to make a law, it may delegate the power "to make rules and regulations for the purpose of applying and executing the law".[11] Since the law is a police measure, intended solely to protect life and property from damage by fire,[12] it would seem that the powers delegated to the Fire Marshal come under the second class, and are not open to objection. As a matter of public policy, the centralization of this power in the hands of a single expert would seem highly desirable; and from arbitrary or unreasonable rulings relief may be had by judicial intervention.[13]

That part of the statute which makes it the duty of every owner to keep his premises safe is salutary, because by increasing individual responsibility it will stimulate individual carefulness. The basis of liability is still negligence, as at common law, but by prescribing standards the statute makes that negligence which was not so before its enactment.[14] In the absence of such standards as the Fire Marshal may establish, the questions of whether or not an injury is due to negligence, and what constitutes negligence, will remain for the jury

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[7] *Id.* § 30b; § 42.

[8] *Id.* § 45. The First American N. F. P. Convention adopted in 1913 the following resolution: "It is the sense of this Convention that each of the several States should adopt a State building code with requirements which local governing bodies may raise but not lower by local enactment, said requirement to be enforced by proper governmental machinery over all of each and every State."

[9] *Id.* § 38.

[10] *Id.* § 39.

[11] 1 Sutherland, Statutory Construction (Lewis' 2nd ed.) § 89. In Dowling *v.* Insurance Co. (1896) 92 Wis. 63, 65 N. W. 738, it was said that "the true distinction is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring authority or discretion as to its execution, to be exercised under and in pursuance of the law". See Arms *v.* Ayer (1901) 192 Ill. 601, 61 N. E. 851.

[12] Rhinehart *v.* State (1908) 121 Tenn. 420, 117 S. W. 508.

[13] II Report of Atty. Gen. (N. Y. 1912) 306.

[14] At common law the basis of liability for injury is the negligence of the person on whose premises the fire begins. 3 Shearman and Redfield, Negligence (6th ed.) § 665. But for an injury to an individual which is the proximate result of the owner's failure to have adequate fire escapes, for example, the common law imposes no liability. 1 Beven, Negligence (3rd ed.) 493. And for injury due to the owner's failure to keep on hand the proper means for extinguishing fire, there is a difference of opinion. 1 Beven, *supra*, 492; McNally *v.* Colwell (1892) 91 Mich. 527, 52 N. W. 70. That the statutory liability is still based on negligence, see Gorman *v.* McArdle (N. Y. 1893) 67 Hun, 484.

in each case;[15] but a certificate from the proper official will be *prima facie* proof that the owner has taken all necessary and reasonable steps to make his premises safe.[16]

One question remains: does an individual injured by a failure to comply with one of the provisions of such a statute have a cause of action? Although there is a difference of opinion in the United States, the weight of authority holds that he does.[17] This would seem the better view, since the intention is clearly not only to protect the body politic from injury, but also to make each man conform more strictly to the rule that he shall so use his property as to do no legal hurt to his neighbor.

In its inspection provisions, its centralization of control in the hands of a body of experts, its provisions for uniform standards of protection, and its creation of a high degree of individual responsibility, the Kentucky statute is extremely commendable and might well be followed in the other states.

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[15]Kohn *v.* Clark (1912) 236 Pa. 18, 84 Atl. 692.

[16]Kohn *v.* Clark, *supra.* Whether the duty to install adequate means of protection arises before any order has issued from the Marshal's office, is a moot question. The better considered cases and the weight of authority hold that it does. Carrigan *v.* Stillwell (1903) 97 Me. 247, 54 Atl. 389; Arms *v.* Ayer, *supra*; Arnold *v.* National Starch Co. (1909) 194 N. Y. 42, 86 N. E. 815; *contra,* Perry *v.* Bangs (1894) 161 Mass. 35, 36 N. E. 683.

[17]Gorman *v.* McArdle, *supra*; Willy *v.* Mulledy (1879) 78 N. Y. 310; see West *v.* Inman (1912) 137 Ga. 822, 74 S. E. 527; *contra,* Grant *v.* Slater Mill etc. Co. (1884) 14 R. I. 380.